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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS FLORES,

Defendant and Appellant.

F067892

(Super. Ct. No. F10905340)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James M. Petrucelli, Judge.

David Y. Stanley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Paul A. Bernardino, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Peña, J.

Defendant Luis Flores was convicted by jury trial of murder, discharge of a firearm from a motor vehicle, and participating in a criminal street gang. He was sentenced to 25 years to life in prison without the possibility of parole. On appeal, he contends (1) the attorney's fee award should be vacated because the trial court failed to provide him notice and a hearing and because the record reflects his inability to pay the fee, (2) the abstract of judgment should be corrected to reflect that his liability for victim restitution is joint and several, and (3) the parole revocation fine should be stricken. We strike the parole revocation fine and order the abstract of judgment modified. In all other respects, we affirm.

DISCUSSION

I. Attorney's Fee Award

Defendant contends the trial court erred when it imposed attorney fees because it failed to follow the procedures required by Penal Code section 987.8,¹ including notice, a hearing, and a determination of his ability to pay. The People argue defendant forfeited the issue by failing to object at trial. We agree.

Section 987.8, subdivision (b) provides:

“In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, *after notice and a hearing*, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.” (Italics added.)

At such a hearing, the defendant is entitled to various rights, including the right to be heard in person, to present witnesses and documentary evidence, to confront and

¹ All statutory references are to the Penal Code.

cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a written statement of the court's findings. (§ 987.8, subd. (e)(1)-(5).)

A defendant's ability to pay is based on his "overall capacity ... to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her." (§ 987.8, subd. (g)(2).) In making that determination, the court is to consider "[t]he defendant's present financial position." (§ 987.8, subd. (g)(2)(A).) Absent "unusual circumstances," however, "a defendant sentenced to state prison shall be determined *not* to have a reasonably discernible future financial ability to reimburse the costs of his or her defense." (§ 987.8, subd. (g)(2)(B), italics added.)

In this case, the probation officer's report recommended the imposition of attorney fees pursuant to section 987.8. At sentencing, the trial court followed the probation officer's recommendation and ordered defendant to "pay attorney's fees pursuant to Penal Code Section 987.8 as set forth in the Fresno County flat rate fee schedule of fees." Defendant did not object.

Since the parties submitted their briefs, the Supreme Court has decided that a defendant forfeits his objection to the imposition of attorney fees under section 987.8 if he fails to object before the trial court. (*People v. Aguilar* (2015) 60 Cal.4th 862, 865-869.) Accordingly, we conclude defendant may not raise this claim on appeal.

II. Victim Restitution

The parties agree that the abstract of judgment fails to reflect the trial court's order that defendant's liability for the \$7,500 and \$207.36 victim restitution fines is joint and several, as recommended by the probation officer's report. We will order the abstract corrected to reflect the trial court's oral pronouncement of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186 [where discrepancy exists between oral pronouncement of judgment and abstract of judgment, oral pronouncement controls].)

III. Parole Revocation Fine

The parties also agree that the trial court erred in imposing a \$10,000 parole revocation fine pursuant to section 1202.45 because defendant was sentenced to a term of life without the possibility of parole and thus the fine was inapplicable. (*People v. Oganessian* (1999) 70 Cal.App.4th 1178, 1183 [“if there is no parole eligibility, no section 1202.45 fine may be imposed”].) Accordingly, we will strike the fine.

DISPOSITION

The \$10,000 parole revocation fine pursuant to section 1202.45 is stricken. The trial court is directed to modify the abstract of judgment to reflect (1) that defendant’s liability for the \$7,500 and \$207.36 victim restitution fines is joint and several, and (2) that the \$10,000 parole revocation fine pursuant to section 1202.45 has been stricken. The court is further directed to send copies of the amended abstract to the appropriate entities. As so modified, the judgment is affirmed.